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LOK SABHA

The following report of the Select Committee on the Bill further to amend the Electricity (Supply) Act, 1948, was presented to Lok Sabha on the 30th November, 1956:—

Composition of the Select Committee.

1. Shri N. C. Chatterjee—*Chairman.*
2. Shri N. C. Kasliwal
3. Swami Ramanand Shastri
4. Shri Rup Narain
5. Shri Bishwa Nath Roy
6. Dr. M. C. Jatav-vir
7. Shri W. S. Kirolikar
8. Shri A. S. Damar
9. Shri Ahmed Mohiuddin
10. Shri G. H. Deshpande
11. Shri S. R. Rane
12. Shri Debendra Nath Sarmah
13. Shri T. Sanganna
14. Shri Subodh Hasda
15. Shri A. Ibrahim
16. Shri L. N. Mishra
17. Shri Rajeshwar Patel
18. Shri Naval Prabhakar

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19. Shri K. G. Wodeyar
20. Shri N. P. Damodaran
21. Shri I. Eacharan
22. Shri Ranbir Singh Chaudhuri
23. Shri S. K. Kandasamy
24. Shri Bijoy Chandra Das
25. Shri Sadhan Chandra Gupta
26. Shri K. Kelappan
27. Shri Kandala Subrahmanyam
28. Shri Tulsidas Kilachand
29. Shri Benjamin Hansda
30. Shri Gulzarilal Nanda.

DRAFTSMAN

Shri S. K. Hiranandani, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri N. N. Mallya, *Deputy Secretary.*
Shri A. L. Rai, *Under Secretary.*
Shri P. K. Patnaik, *Under Secretary.*

Report of the Select Committee

1. the Chairman of the Select Committee to which the *Bill further to amend the Electricity (Supply) Act, 1948 was referred, having been authorised to submit the report on their behalf, present their Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 26th September, 1955.

3. The motion for reference of the Bill to a Select Committee was moved by Shri Gulzarilal Nanda on the 14th August, 1956, and was discussed and adopted on the same day.

4. The Committee held eleven sittings in all.

5. The first sitting of the Committee was held on the 31st August, 1956 to draw up a programme of work.

6. At the second and third sittings held on the 19th and 20th October, 1956 the Committee heard the evidence tendered by the associations.

The Committee have decided to lay the evidence tendered before them on the Table of the House *in extenso*.

7. The Committee considered the Bill clause by clause at their sittings held on the 20th October and the 14th, 16th, 19th, 21st, 22nd and 23rd November, 1956.

8. The report of the Committee was to be presented on the opening day of the Fourteenth Session, i.e., the 14th November, 1956. The Committee were granted extension of time on the 14th November, 1956 upto the 30th November, 1956.

9. The Committee considered and adopted the Report on the 28th November, 1956.

10. Six memoranda/representations on the Bill were received by the Committee from different Associations and public bodies.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 1.*—The Committee feel that the amendments made in the Sixth Schedule by clause 27, except those made by sub-clause

*Published in Part II—Section 2 of the Gazette of India Extraordinary, dated the 26th September, 1955.

(a) and part (i) of sub-clause (b) of that clause, should not come into force at once as the licensees should be given some time to adjust themselves to the new financial provisions. Sub-clause (2) has, accordingly, been added to empower the Central Government to bring these amendments into force at a later date.

13. *Clause 8.*—The Committee feel that general consumers of electricity should be represented on the State Electricity Consultative Council. The clause has been amended accordingly.

14. *Clause 11.*—In the opinion of the Committee, the limit of ten lakhs of rupees with respect to the preparation of schemes by the Board without prior consultation with the State Government is too stringent. The limit has accordingly been raised to fifteen lakhs.

15. *Clause 12.*—The Committee are of the view that section 29 of the principal Act should not apply to schemes prepared by the Board at the instance of, or under the direction of, the Central Government or a State Government. The amendment made in this clause would enable State Governments to exclude such schemes from the operation of section 29.

16. *Clause 13.*—The Committee feel that inasmuch as the powers of the Board are being expanded so as to enable it to issue directions to a licensee in respect of the whole undertaking or any part of it, the directions issued by the Board to a licensee should be reasonable. Any dispute whether the directions are reasonable or not would be decided by the Central Electricity Authority. The clause has been amended accordingly.

17. *Clause 14.*—The composition of a Rating Committee where a Board is constituted has been altered. In the opinion of the Committee, since the Board initially determines whether a licensee has committed a breach of the provisions of the Sixth Schedule, it should not have more than one representative on the Rating Committee. Some members of the Committee expressed the view that there should be a representative of consumers of electricity on the Rating Committee. The Committee, however, feel that the interests of the consumers would be sufficiently safeguarded if one of the members of the Rating Committee is a judicial officer of standing. The Committee further feel that judicial member of a Rating Committee should be its Chairman.

In the opinion of the Committee, it is necessary to fix a time-limit within which a Rating Committee should submit its report. It has accordingly been provided that after the initial period of three months any extension for the submission of the report should be restricted to a further period of three months. The new sub-section (6) in section 57A is intended to prevent a deadlock where one of

the members of a Committee chooses to remain absent. The other amendments are either clarificatory or consequential.

18. *Clause 17.*—The Committee feel that taxes on income and profits should have priority after the operating and management costs have been met. The clause has been amended accordingly.

19. *Clause 18.*—The revised section 68 has been made self-contained by incorporating in it the provisions of paragraphs I and II of the Seventh Schedule.

20. *Clause 19 (New clause).*—This clause amends section 75 of the principal Act and provides for the submission by the Board of an annual report giving an account of its activities during the previous financial year and proposed activities, if any, which are likely to be undertaken by the Board in the next financial year. It has been provided that every such report shall be laid before the State Legislature.

21. *Clause 20 (Original clause 19).*—The amendment provides that where a licensee fails to pay to the Central Electricity Authority costs of arbitration proceedings after a notice in this behalf has been given to the licensee, such costs may be recovered by the authority as an arrear of land revenue.

22. *Clause 21 (Original clause 20).*—The amendment made is clarificatory.

23. *Clause 23 (Original clause 22).*—A view was expressed before the Committee that all directions issued by the State Government to a Board should be laid before the State Legislature. Certain practical difficulties were, however, pointed out if such a provision was incorporated in the Act. The Committee have therefore not made any amendment in this clause. The Committee, however, recommend that where any directions are issued to the Board by the State Government, the Board should, unless public interest otherwise requires incorporate such directions in its annual report which will be laid before the State Legislature.

24. *Clause 24 (Original clause 23).*—The amendments made are drafting amendments.

25. *Clause 26 (Original clause 25).*—The amendment made is consequential on the change made in the definition of 'standard rate' which is now being linked up with the Reserve Bank rate.

26. *Clause 27 (Original clause 26).*—

Sub-clause (b): The provision permitting alteration of rates only once in each year has been restricted to enhancement of rates. The Committee feel that a licensee should be free to reduce the rates

any number of times he may choose to do so. The Committee also feel that a licensee should be able to enhance the rates after giving notice of two months, and approval of the State Government for such enhancement of the rates should not be necessary. The other amendments made in this sub-clause are consequential on the amendments made in section 57A.

Sub-clause (c): This sub-clause has been redrafted with a view to reducing licensee's share of the excess of clear profits over the reasonable return from $7\frac{1}{2}$ per cent. to 5 per cent. In the opinion of the Committee, such reduction is the logical result of the reduction of the permissible excess of clear profit over the reasonable return from 30 per cent. to 15 per cent.

Sub-clause (e): The provisions about Development Reserve have been re-drafted so as to make the intention clear. The sub-clause has been further amended to enable a licensee to spread the contributions to this Reserve over a period of five years. A provision has also been made for the creation of a new reserve to be called the Deferred Taxation Reserve. The creation of this reserve has been considered necessary on account of the difference in the depreciation allowances permissible under the Electricity (Supply) Act, 1948 and the Income-tax Act, 1922. The accumulation in the reserve would be useful when higher taxes on income, profits and gains become payable. The contributions to this reserve will consist of annual sums equal to the amount of income-tax and super-tax on the amount of the excess, if any, of the clear profits of the licensee over his income, profits and gains computed for income-tax purposes.

Sub-clause (f): A clarificatory amendment has been made in sub-paragraph (2) of paragraph VI.

Sub-clause (g) (New Sub-clause): A consequential change has been made in sub-paragraphs (2) and (3) of paragraph VII as a result of the amendment made by sub-clause (c) (a) (i), for the purpose of enabling a licensee to charge in one instalment the costs of obsolete and unserviceable assets, which had not been written down, to the contingencies Reserve.

Sub-clause (h) [Original sub-clause (g)]: The amendment made is a formal amendment.

Sub-clause (i) [Original sub-clause (h)]: The Committee have redrafted this sub-clause with a view to bringing out clearly that no limitation on dividend or distribution of profits is intended in cases where the amount of depreciation and the instalment in respect of arrears of depreciation due for the year of account and any arrears in respect of these two items for the past years are provided for in the books of the licensee.

Sub-clause (j) [Original sub-clause (i)]: The amendments are consequential on the enactment of the Companies Act, 1956.

Sub-clause (1) [Item (a) (i)]: The amendment made is consequential on the amendment made in paragraph VII.

Item (a) (v): A new item has been added providing for the deduction from the capital base of the amount carried forward in the accounts of licensee for distribution to consumers under paragraph II. The other amendment is clarificatory.

Item (b) (v): Sub-clause (xiii) has been inserted to provide for cases where a dispute regarding bonus is referred for determination to any tribunal or other authority under any law for the time being in force relating to industrial or labour disputes. In other cases, bonus paid to employees will be allowed as expenditure only, if, payment of such bonus, has been approved by the State Government.

Item (c): A new item has been added consequential on the creation of the Deferred Taxation Reserve.

Item (d): The Committee feel that interest paid by a licensee on borrowed capital employed in the construction of works should be included in the original cost of fixed assets only upto the date of commencement of supply by the undertaking.

Item (e) (i): The amendment made is consequential on the provision requiring Deferred Taxation Reserve to be invested in approved securities.

Item (e) (iii): The Committee feel that licensees should be permitted to earn $\frac{1}{2}$ per cent. return on the accumulations in the Development Reserve as handling charges of the fund. A new clause has been inserted for this purpose.

27. *Clause 28 (Original clause 27).*--The amendment made is a formal one.

28. *Clause 29 (Original clause 28).*—Paragraph II of the Eighth Schedule is being amended consequential on the reasonable return being linked up with the Reserve Bank rate.

29. The Select Committee recommend that the Bill as amended be passed.

N. C. CHATTERJEE,
Chairman,
Select Committee.

NEW DELHI;
The 29th November, 1956.

Minutes of Dissent

I

We think it necessary to record our dissent in respect of certain aspects of the report of the Committee.

2. *Clause 4.*—We think it very unfortunate that clause 4 has not been amended to afford representation to workmen employed in connection with the generation, supply and distribution of electricity and to consumers of electricity on the State Electricity Boards.

The main function of the Electricity Boards as laid down by section 18 of the Electricity Supply Act, 1948 is to promote the co-ordinated development of the generation, supply and distribution of electricity. The workers employed in the industry as well as employees who are workmen within the meaning of the Industrial Disputes Act, 1947 have a considerable interest in this matter because any scheme of development is likely to involve issues which would vitally affect their interests. For example, such a scheme might involve additional work-load on the workmen engaged in the industry or it may give rise to the question of necessity to retrench or to provide alternative employment to workmen who may be displaced by increased automation in the industry. When such matters arise—and such matters are expected to arise fairly frequently when schemes of development are undertaken—it is but elementary justice that the workmen should have a say in the matter and should be in a position to influence the decision by putting forward their point of view, and, if necessary, by casting their vote. Besides even apart from the sectional interest of workmen, the workmen's representative, by bringing in the practical experience of the working of the industry, which workmen must necessarily possess, will be able to make valuable suggestions for the removal of defects and for the more efficient and economical running of the industry. In spite of all this, however, there is a tendency both in our administration and in our legislation to ignore the workmen's claim to be represented on important bodies. We cannot too strongly protest against this tendency.

The justification of representing consumers of electricity on the Electricity Boards is also self-evident. In all schemes of development, consumers have an obvious interest and should therefore be allowed to have their say and to influence the decision by their vote.

3. *Clause 27.*—(a) We strongly feel that the committee should have amended the Bill so as to rationalise the regulation of profits. Under the Act as it stands at present, a licensee is entitled to earn

a reasonable return plus $7\frac{1}{2}\%$ of the reasonable return which again is 5% of the capital base. Except for modifying this scheme by reducing $7\frac{1}{2}\%$ to 5 per cent and by altering 5 per cent of the capital base to the Reserve Bank rate plus 2 per cent, the basic character of the scheme has been left as it is at present. We think that the principle of this scheme is unfair to consumers. The capital base in the case of licences operating for a long time has absolutely no relation to their paid-up capital. In many cases, the capital base is almost three times the paid-up capital. The standard rate of reasonable return as provided in the present Bill is the Reserve Bank rate plus 2 per cent, which would work out at present and during the foreseeable future at not less than $5\frac{1}{2}\%$ percent. This being the return free of income tax, the actual return would work out at over 8 per cent of the capital base, and therefore in the case of some of the old companies at some 25 per cent of the paid up capital. There is no justification for allowing such a high return because electricity supply being a monopoly and subject to practically no risks in the case of licensees operating in the bigger cities and industrial areas, the capital base cannot be said to have been built up by their efficiency or enterprise and therefore they should not be entitled to claim a disproportionate return on the capital base so built up.

On the other hand, it would not be feasible to regulate the return with reference to paid up capital alone, for in such a case a relatively higher rate in term of percentage might have to be fixed in order to enable capital to be drawn into the industry and such high rate may in many cases be more than what the licensee would be entitled to get under the present scheme. We, therefore, think that a scheme should be adopted to whereby the reasonable return is calculated at a certain percentage of the capital base but subject to a maximum which should be fixed as a certain percentage of the paid-up capital. For example, it may be fixed at 5 per cent of the capital base subject to a maximum of double the Reserve Bank rate on the paid-up capital. There is, however, rigidity about these rates and any reasonable rate may be fixed which would ensure a return which can be regarded as fair when the consumers' interest is taken into consideration.

(b) Lastly, we must record our strongest disapproval of sub-clause (xiii) added to clause (b) of sub-paragraph (2) of paragraph XVII of the Sixth Schedule by clause 27(1) (b) (v) of the present Bill. It is undoubtedly very necessary to provide for bonus as an item of expenditure in order to enable licensees to pay bonus to their workmen. But the provision made in this case would create a lot of complications and might result in the denial of bonus to workmen. It is undoubtedly proper that the bonus paid to all the staff should not be at the discretion of the licensee, for in that event the

licensee may well put up certain persons in whom he is interested as employees, and by way of paying bonus to them circumvent the provisions for regulating his profits. In the case of highly paid staff, therefore, it is right that the payment of bonus should be subject to the approval of the State Government. No such danger, however, can arise from payment of bonus to employees who are workmen within the meaning of the Industrial Disputes Act, 1947, that is to say, supervisors, clerks and labourers. In their case payment of bonus should not be subject to any fetters. The provision made in the Bill, however, envisages that bonus can be paid either if there is an adjudication awarding bonus or if payment is approved by the State Government.

Adjudication proceedings are notoriously dilatory, sometimes taking three or four years to complete. Besides, the workmen have no right to have a dispute referred to adjudication and would be completely at the mercy of the State Government.

Again, the employer can easily hold up the payment of bonus by sitting over the matter and by not approaching the State Government for approval. Therefore, in either case, the workmen would be without any remedy and would in effect be deprived of the right of collective bargaining in respect of bonus. We, therefore, strongly recommend that the proposed new sub-clause (xiii) should be modified so as to give the licensee complete freedom to pay bonus to employees who are workmen within the meaning of the Industrial Disputes Act, 1947 and to make the payment of bonus to all other employees subject to the approval of the State Government. We regret that we could not persuade the Committee to adopt such a course. We see no objection to the discrimination that such a provision involves. Workmen are on an entirely different plane from better—paid employees, and so there is absolutely rational basis for a discrimination in their favour.

In any event, we would strongly suggest that if a discriminatory scheme is not adopted, provisions should be made (a) for compulsory adjudication in case a dispute arises regarding payment of bonus to workmen and (b) for enabling workmen or their trade unions to approach the State Government for approval of payment of bonus, even if the licensee does not make the approach himself.

NEW DELHI;

The 29th November, 1956.

SADHAN CHANDRA GUPTA.

BIJOY CHANDRA DAS.

II

The Electricity Supply Industry has been rightly grouped as one of the most important utilities vital to the economic development of the country. The emphasis attached to the need for growth of this Industry in the economic planning in India is due to its essential role in the rapid industrialisation which is sought to be brought under the successive Five Year Plans. Viewed in this context, the need for its proper control and regulation is quite obvious. However, it will be in the national interest to see that this attempt on the part of the Government to control and regulate this Industry is not carried beyond reasonable limits, since excessive control will only throttle rather than promote its rapid development. I concede that the Select Committee has paid keen attention towards this basic requirement of our national economy. Nevertheless, there are several aspects of this Bill where I have had differences with the majority of the Committee members and therefore I submit this note. I certify that I have read the report.

With the enactment of the Electricity (Supply) Act in 1948 there was placed on the Statute Book a law "to provide for the rationalisation of the production and supply of electricity and for taking measures conducive to electrical development..." in the country. The basic provisions of the Act relating to State Electricity Boards have remained unimplemented in States other than Delhi, Madhya Pradesh, West Bengal and Bombay, and it would have been more appropriate if the Bill had made specific provisions making it obligatory for State Governments to delay no further the constitution of the Electricity Boards.

As far as the Licensees are concerned, their operations during the last 7 years have been subject to the financial provisions embodied in the Sixth Schedule and the Table appended to the Seventh Schedule to the Act. The brief period the Act has been in operation has thrown out a number of inhibiting factors. While the Bill as reported upon by the Select Committee has gone some way to remove some of the difficulties facing the Industry, it cannot be stated that all the problems have been grappled with.

The basic conflict with regard to depreciation between the Income-tax Act and the Electricity (Supply) Act has given rise to a special problem which is peculiar to the Electric Supply Industry. When an electric supply undertaking installs new plant and machinery the accelerated income-tax depreciation in the initial years results in

tax relief. This relief instead of being placed in a reserve for payment of future tax liability is for the present passed on to the consumers.

This problem has been sought to be met by the new clauses dealing with Development Reserve and the Deferred Tax Reserve.

The benefit of the Development Rebate, which was introduced by the Finance Minister as a gift to all Industry so as to promote development, is made available to the Electric Supply Industry in a very restricted manner in that no benefit accrues to the investor, except a $\frac{1}{2}$ per cent. handling commission.

While there is some incentive, although very minor in the case of the Development Reserve, the provision in the Bill with regard to the Deferred Tax Reserve is not of much use, hemmed in as it is by the proviso that such reserve cannot be created in the year when a rate increase is there. Dealing with the wording of the new paragraph VB regarding Deferred Tax Reserve, the Proviso to the Clauses do not appear to bring about the intention of the Select Committee. I would accordingly suggest that the Proviso be reworded as follows:

“Provided that—

- (a) the sum to be appropriated towards the Deferred Taxation Reserve under this sub-paragraph in respect of the accounting year shall be reduced to the extent of the amount calculated under sub-paragraph (1) of Paragraph VA in respect of Development Reserve (whether such amount be appropriated or not in terms of the Proviso thereto);
- (b) Where for any reason the licensee increases the rates of supply prevailing in any accounting year after the commencement of the Electricity (Supply) Amendment Act, 1956, the licensee shall not appropriate any amount towards the Deferred Taxation Reserve in respect of that year under this sub-paragraph”.

What constitutes a ‘fair return’ to the investor in the Electric Supply Industry overshadows all other considerations. The framers of the Electricity (Supply) Act, 1948, were apparently largely guided by the mere provision of a rate of return which, according to them, was fair. That conception has in a changing economic climate, incidental to a developing economy, become out of date. The real issue, in fact, is whether the term ‘cost of capital’ is synonymous with any preconceived notions of what is a fair rate of return and whether with such a cost equity capital can be attracted in competition with other industries offering greater return. In a realistic sense the measure of return must be adequate to maintain sound corporate

credit and to permit a public utility company under efficient management to raise new capital *without impairing the integrity of the existing investments*. The proposal in the Bill in this respect woefully fails to meet this test.

The Bill provides for a 'standard rate' with a differential of 2 per cent over the Reserve Bank Rate. With the Bank Rate ruling at $3\frac{1}{2}$ per cent., the return to the investor will be $5\frac{1}{2}$ per cent. after the enactment of the Bill. Against this must be set the danger of the Industry being exposed to the vagaries of the Bank Rate (which is an instrument of political policy), and should this be downgraded, return to the investor in the Industry might well be below the present rate of 5 per cent.

It must also be emphasised that although the undertakings are entitled to set their rates at a level which will enable them to earn the reasonable return, the possibility of the investor not receiving even this minimum rate of return in the contingency of the utility business not paying its way—a possibility real in many cases—cannot be ruled out. Such undertakings are *per force* compelled to face the economic reality which any normal business has to contend with. In this respect at least the investor owned utilities are in a different category compared to undertakings operated by State Government Electricity Departments or statutory Electricity Boards which are by and large subsidized by the general tax payer. This factor needs to be borne in mind in considering the problem.

How does one account, it may be asked, for dividends higher than the 'standard rate' paid by some of the undertakings. This is explained by the fact that such undertakings have in the past built up reasonably satisfactory financial positions by retaining in the business a proportion of the profits earned each year, resulting in their net blocks exceeding their paid-up share capital. Every capital issue made after the passage of the Act in 1948 has had the effect of reducing this difference.

A notable characteristic of the Electric Supply Industry, compared to an ordinary manufacturing Company, is its much greater investment per rupee of annual income. The Second Five Year Plan has drawn pointed attention to this feature, and has underlined that investment in power development has to be "lumpy". With such a capital intensive industry, low returns tend to dry up resources for expansion, and should the undertakings be called upon to face this eventuality indefinitely, a serious blow would be struck, as already mentioned by me earlier, at the root of development itself.

The objectives underlying any programme of electrical development in the country can briefly be summarised as

- (a) an overall increase in the production of electricity;
- (b) the generation of this increased quantum of power in the most efficient units and the distribution of power over as wide an area as possible.

The past record of the Electric Supply Industry is a safeguard that it is fully capable of implementing the objectives mentioned above. This postulates the continued functioning of the investor-owned utilities so that they can well serve the community and, therefore, a Bill which seeks to be an ameliorative measure cannot but face the problem boldly.

A reference here to cost of money in other spheres would be appropriate. The rate of interest charged by the Industrial Finance Corporation of India and the State Finance Corporations is no less than 6%. The interest levied by the World Bank on its lendings is of the order of 4½%, with prospects of a rise. Recent State loans have had to offer an interest rate of 4% compared to 3% in respect of previous loans. In this background a mere ½ per cent increase sought to be granted to the investor in the Electric Supply Industry is grossly inadequate.

The effect of a greater increase in the return to the investor on the rates charged to the consuming public is, of course, relevant and is the concern of Parliament. However, the effect of an increase in the 'Standard Rate' to 6½%, which I would advocate, would be so negligible as to have no effect on the consumer. At the most the average rise would be of the order of 1½ pies to 2 pies per unit. It, therefore, follows that the proposed increase in the reasonable return does not mean that a general rise in the electricity charges must follow; and in any case, the effect will be very small. When one studies what investors in the Electric Supply Industry have received in recent years in relation to the economic rate paid by consumers and in relation to other costs going into Electric Supply Service, there is no reason why there should be distrust at the very negligible rate increase which could be visualised. Prices of plant, coal and fuel, oil, wage, maintenance and other costs, have gone up three to four-fold following the general increase in price level but the share going to the investor in Electric Supply Industry has in fact decreased. The cost of electric supply service in the important economic centres of the country is the one bright spot in the otherwise gloomy inflationary picture.

The investing public in the Electric Supply Industry, as indeed in Industry generally, is not a select few. Among this public are a

large number of citizens of moderate and small means. Then, again, one has to consider an institutional investor like the State Insurance Corporation which has sizeable investments in the industry. The welfare of such sections of society therefore does not conflict with that of the consuming public.

One facet of the problem is bound up with the conception of 'tax free' reasonable return. The Sixth Schedule permits "all taxes on income and profits" as an item of operating expenditure. However, investors in undertakings which face 'nil' assessment because of tax relief obtained under the Income Tax Act are confronted with the unpalatable fact of not being able to obtain a rebate, and moreover are subject to tax on the dividends they receive. This makes the situation all the more difficult, and in fixing the 'Standard Rate' account must be taken of this peculiar feature. If Electric Supply Undertakings were like other industrial ventures, things would be more simple. No person would continue to operate under adverse conditions. Either he should assure himself of an adequate return taking into account all eventualities or he would refuse to invest additional capital. But a Licensee operating an Electric Supply Undertaking is under statutory obligation to meet the growing demands in his area. This important factor must be recognised when considering the financial problem of the industry.

The Electric Supply Industry in the country has a sizeable programme of expansion during the Second Five Year Plan period. This is expected to need finance of the order of Rs. 75 crores. Only a small part of this finance can come from depreciation monies, and consequently the bulk of it must come from the investor. Where is the incentive being offered to the investor? What will happen to all those other industries dependent upon electricity if the investor does not come forward to sustain the equity in the Electricity Supply Industry? Before the investor parts with his savings, he should certainly be studying the outlook for various types of stock; and if his decision is to weigh in favour of Electricity shares, with their inevitable unspectacular yield, it is absolutely essential that he should be sure of reasonable treatment. In other words, the outlook for utility Shares should be "set fair". Equity values in the Industry are now in doldrums. Important companies' shares are even at a discount. It will be too much to expect that investors will come forward in these conditions. It would therefore, be in the fitness of things that the differential over the Bank Rate is fixed at atleast 3%, making (at present) 6½% in all.

TULSIDAS KILACHAND.

[Received on the 30th November, 1956]

Bill No. 50-A of 1955

THE ELECTRICITY (SUPPLY) AMENDMENT
BILL, 1955

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

*further to amend the Electricity (Supply) Act, 1948.*BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

Short title.

1. (1) This Act may be called the Electricity (Supply) Amendment Act, 1956.

(2) The provisions of this Act except the provisions of sub-clause 5
(ii) of clause (b) of section 27 and clauses (c) to (l) of that section shall come into force at once; the provisions of sub-clause (ii) of clause (b) of section 27 and clauses (c) to (l) of that section shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10

Amendment
of section 1.

2. In section 1 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the principal Act), for sub-section (3), the following sub-section shall be substituted, namely:—

54 of 1948.

“(3) This section and sections 2, 3, 4, 57, 57A, 57B, 58, 76, 77, 77A, 77B, 77C, 82 and 83 and the provisions of the Sixth and 15
the Seventh Schedules, shall come into force at once.”.

Amendment
of section 2.

3. In section 2 of the principal Act, for clause (8), the following clause shall be substituted, namely:—

“(8) ‘maximum demand’ in relation to any period shall, unless otherwise provided in any general or special order of the 20

State Government, mean twice the largest number of kilowatt-hours or kilo-volt-ampere-hours supplied and taken during any consecutive thirty minutes in that period."

4. In section 5 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:— Amendment of section 5.

"(4) Of the members—

(a) one shall be a person who has experience of, and has shown capacity in, commercial matters and administration;

10 (b) one shall be an electrical engineer with wide experience; and

(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking."

15 5. Section 10 of the principal Act shall be re-numbered as sub-section (1) thereof, and— Amendment of section 10.

(a) in sub-section (1) as so re-numbered, for clause (e), the following clause shall be substituted, namely:—

"(e) in the opinion of the State Government—

20 (i) has refused to act; or

(ii) has become incapable of acting; or

(iii) has so abused his position as a member as to render his continuance on the Board detrimental to the interests of the general public; or

25 (iv) is otherwise unfit to continue as a member; or";

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) The State Government may suspend any member pending an inquiry against him.

30 (3) No order of removal shall be made under this section unless the member concerned has been given an opportunity to submit his explanation to the State Government, and when such order is passed, the seat of the member removed shall become vacant and another member may be appointed
35 under section 5 to fill up the vacancy.

(4) A member who has been removed shall not be eligible for re-appointment as member or in any other capacity to the Board.

(5) If the Board fails to carry out its functions, or refuses or fails to follow the directions issued by the State Government under this Act, the State Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places." 5

Insertion of
new section
10A.

6. After section 10 of the principal Act, the following section shall be inserted, namely:—

Power of
State Gov-
ernment to
declare cer-
tain transac-
tions void.

"10A. (1) The State Government may declare void any transaction in connection with which a member has been removed under sub-clause (iii) of clause (e) of sub-section (1) of section 10 10 after considering the report on the facts of the case made to it by a District Judge nominated by it in this behalf.

(2) A District Judge nominated under sub-section (1) shall, before making his report under that sub-section to the State Government in relation to any transaction, give all parties 15 interested in the transaction a reasonable opportunity of being heard.

(3) Where a transaction is declared void under this section, it shall not be enforceable by any party to the transaction but the provisions of section 65 of the Indian Contract Act, 1872, 20 9 of 1872, shall, so far as may be, apply to such transaction as they apply to an agreement which is discovered to be void or a contract which becomes void.

(4) The decision of the State Government declaring any transaction void under this section shall be final and shall not 25 be called in question in any court."

Amendment
of section 15.

7. To section 15 of the principal Act, the following proviso shall be added, namely:—

"Provided that the appointment of the Secretary shall be subject to the approval of the State Government." 30

Amendment
of section 16.

8. In section 16 of the principal Act,—

(a) for the words 'State Electricity Council' wherever they occur, the words 'State Electricity Consultative Council' shall be substituted;

(b) in sub-section (2), for the words 'and labour employed 35 in the electricity supply industry', the words 'labour employed in the electricity supply industry and consumers of electricity' shall be substituted.

9. In section 23 of the principal Act, in sub-section (2), the words 'on terms similar to the terms offered by the Board' shall be omitted. Amendment of section 23.

10. In section 26 of the principal Act,—

(a) in the proviso, for the words and figures 'Clauses I to XII', the words and figures 'Clauses I to V, Clause VII and Clauses IX to XII' shall be substituted; Amendment of section 26

(b) after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced."

11. In section 28 of the principal Act, in the existing proviso, after the word 'provided', the word 'further' shall be inserted and before the said proviso, the following proviso shall be inserted, namely:— Amendment of section 28.

"Provided that no scheme or a part of a scheme which is estimated to result in a capital expenditure exceeding fifteen lakhs of rupees shall be prepared by the Board without prior consultation with the State Government."

12. In section 29 of the principal Act,—

(a) in sub-section (1), for the words and figures 'The Board shall cause every scheme prepared under section 28', the words and figures 'Unless otherwise directed by the State Government or the Authority, the Board shall send a copy of every scheme prepared under section 28 to the State Government and to the Authority and shall cause every such scheme' shall be substituted; Amendment of section 29.

(b) in the first proviso to sub-section (2), for the words 'fifty lakhs of rupees', the words 'one crore of rupees' shall be substituted.

13. Section 55 of the principal Act shall be re-numbered as sub-section (1) thereof, and— Amendment of section 55.

(a) in sub-section (1) as so re-numbered,—

(i) for the word 'directions', the words 'reasonable directions' shall be substituted;

(ii) for the words 'the station', the words 'his undertaking or any part thereof' shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) If any dispute arises between the Board and the licensee as to whether any directions given under sub-section

(1) are reasonable or not, it shall be referred to the Authority whose decision thereon shall be final."

Substitution
of new
sections for
section 57.

14. For section 57 of the principal Act, the following sections shall be substituted, namely :—

Licensee's
charges to
consumers.

"57. The provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority—

(a) in the case of a licence granted before the commencement of this Act, from the date of the commencement of the licensee's next succeeding year of account; and 10

(b) in the case of a licence granted after the commencement of this Act, from the date of the commencement of supply,

and as from the said date, the licensee shall comply with the provisions of the said Schedules accordingly, and any provisions 15 of the Indian Electricity Act, 1910, and the licence granted to him thereunder and of any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of section 57A and the said Schedules. 20

Rating
committees.

57A. (1) Where the provisions of the Sixth Schedule and the Seventh Schedule are under section 57 deemed to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee, namely :—

(a) the Board or where no Board is constituted under 25 this Act, the State Government—

(i) may, if satisfied that the licensee has failed to comply with any of the provisions of the Sixth Schedule; and

(ii) shall, when so requested by the licensee in 30 writing, *****

constitute a rating committee to examine the licensee's charges for the supply of electricity and to make recommendations in that behalf to the State Government:

Provided that where it is proposed to constitute a rating 35 committee under this section on account of the failure of the licensee to comply with any provisions of the Sixth

Schedule, such committee shall not be constituted unless the licensee has been given a notice in writing of thirty clear days (which period, if the circumstances so warrant may be extended from time to time) to show cause against the action proposed to be taken:

Provided further that no such rating committee shall be constituted if the alleged failure of the licensee to comply with any provisions of the Sixth Schedule raises any dispute or difference as to the interpretation of the said provisions or any matter arising therefrom and such difference or dispute has been referred by the licensee to the arbitration of the Authority under paragraph XVI of that Schedule before the notice referred to in the preceding proviso was given or is so referred within the period of the said notice:

Provided further that no rating committee shall be constituted in respect of a licensee within three years from the date on which such a committee has reported in respect of that licensee, unless the State Government declares that in its opinion circumstances have arisen rendering the orders passed on the recommendations of the previous rating committee unfair to the licensee or any of his consumers;

(b) a rating committee under clause (a) shall.—

(i) where such committee is to be constituted under sub-clause (v) of that clause, be constituted not later than three months after the expiry of the notice referred to in the first proviso to that clause;

(ii) where such committee is to be constituted at the request of the licensee, be constituted within three months of the date of such request;*

* * * * *

(c) a rating committee shall, after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management and the potentialities of his undertaking, report to the State Government within three months from the date of its constitution, making recommendations with reasons therefor, regarding the charges for electricity which the licensee may make to any class or classes of consumers so, however, that the recommendations are not likely to prevent the licensee from earning clear profit sufficient when taken with the

sums available in the Tariffs and Dividends Control Reserve to afford him a reasonable return as defined in the Sixth Schedule during his next succeeding three years of account:

Provided that the State Government may, if it so deems necessary, extend the said period of three months by a further period not exceeding three months within which the report of the rating committee may be submitted to it;

(d) within one month after the receipt of the report under clause (c), the State Government shall cause the report to be published in the Official Gazette, and may at the same time make an order in accordance therewith fixing the licensee's charges for the supply of electricity with effect from such date, not earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and the licensee shall forthwith give effect to such order;

(e) the charges for the supply of electricity fixed under clause (d) shall be in operation for such period not exceeding three years as the State Government may specify in the order:

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed.

(2) Where a Board is constituted under this Act, the rating committee shall consist of three members as follows:—

(i) one member shall be nominated by the State Government who shall be a person who is or has been a judicial officer not below the rank of a District Judge;

(ii) one member shall be a member of the Board having experience of accounting and financial matters; and

(iii) one member shall be a representative co-opted jointly by the two members referred to in clauses (i) and (ii) from an association of licensees of which the licensee concerned is or is eligible to be a member, and if there is no such association, from such Chamber of Commerce or similar body as the State Government may direct.

(3) Where no Board is constituted under this Act, the rating committee shall consist of five members of whom** three

members shall be nominated by the State Government, one member shall be nominated by the licensee and one member shall be nominated by the association referred to in sub-section (2) or if there is no such association, by such Chamber of Commerce or similar body as the State Government may direct.

38 of 1946.

10

(4) Of the three members to be nominated by the State Government under sub-section (4), one shall be a person who is or has been a judicial officer not below the rank of a District Judge, one shall be a registered accountant within the meaning of the Chartered Accountants Act, 1949, having at least ten years' experience and one shall be a person with administrative experience.

(5) The judicial member of a rating committee shall be its chairman.

15

(6) A rating committee may act notwithstanding that one of its members is absent.

(7) The expenditure incurred in connection with a rating committee as certified by it shall be payable,—

20

(a) where the rating committee was constituted at the request of a licensee, or where the rating committee has held that the licensee has failed to comply with any of the provisions of the Sixth Schedule, by the licensee from that part of the clear profit to which the licensee is entitled under that Schedule;

25

(b) in any other case, by the Board or the State Government, as the case may be.

30

(8) Where a licensee makes default in paying any amount which he is liable to pay under sub-section (7), such amount may, on application to a civil court having jurisdiction, be recovered from the licensee by the distress and sale of any movable property of the licensee.

35

57B. A rating committee constituted under section 57A may, for the purpose of discharging its functions, by notice in writing, require the licensee to give such information, or to furnish such accounts and other documents in his possession or power, as may be specified in the notice.”

Power of rating committee to call for information, etc.

15. To section 58 of the principal Act, the following proviso shall be added, namely:—

Amendment of section 58.

40

“Provided that the Board shall not issue any directions under this section except after obtaining the prior approval of the State Government.”

Amendment
of section 60.

16. In section 60 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) All schemes sanctioned by the State Government and transferred to the Board shall, for the purposes of this Act, be deemed to have been sanctioned by the Board.”

5

Amendment
of section 67.

17. In section 67 of the principal Act,—

(a) after the words ‘management expenses’, the words ‘and after provision has been made for the payment of taxes on its income and profits’ shall be inserted;

(b) in clause (vi), the words ‘repayment of principal and’ shall be omitted;

(c) after clause (vii), the following clause shall be inserted, namely:—

“(viii) the write-down of amounts in respect of intangible assets to the extent to which they are actually appropriated in any year for the purpose in the books of the Board;”

* * * * *

(d) in clause (viii), after the words ‘not exceeding’, the words ‘one-half of’ shall be inserted;

(e) for clause (x), the following clause shall be substituted, namely:—

20

“(x) of the balance remaining, one-half in the reduction of tariffs or for such other purposes beneficial to electrical development in the State, as the Board may think fit, and the remaining one-half to the Consolidated Fund of the State.”

Substitution
of new sections
for
sections 68
and 69.

Depreciation
reserve.

18. For sections 68 and 69 of the principal Act, the following sections shall be substituted, namely:—

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“68. (1) The Board shall create a depreciation reserve and, as far as compliance with the provisions of section 67 makes it practicable, shall, at the end of every year, credit to such reserve from its revenue, such amount as would if made annually throughout the prescribed period of assets specified in the Table appended to the Seventh Schedule and accumulated at compound interest at the rate of three per centum per annum produce by the end of the prescribed period an amount equal to 90 per centum of the original cost of the assets after taking into account the sums already written off and set aside in the books of the Board.”

30

35

(2) The amount to be credited every year to the depreciation reserve under sub-section (1) shall consist of the incremental deposit plus interest on the accumulated balance in the reserve:

5 Provided that the contribution in respect of any asset to the depreciation reserve under this section shall cease at the end of the prescribed period as defined in the Sixth Schedule or when the asset ceases to be used by the Board, whichever is earlier:

10 Provided further that if in any year it is not practicable fully to comply with the provisions of this section, the amount by which the sums actually credited falls short of the amount required under this section in respect of that year, shall be carried forward and together with compound interest thereon at the aforesaid rate, shall be credited to the said reserve as soon as it is found possible in accordance with section 67, so to do:

15 Provided further that the accumulations in the depreciation reserve may be invested in the business of the Board, or utilised for repayment of principal not guaranteed under section 66 or for repayment of sums paid by the State Government under guarantees under that section.

20 69. (1) The Board shall cause proper accounts and other re- Accounts
 cords in relation thereto to be kept, including a proper system and audit.
 of internal check and prepare an annual statement of accounts, including the profit and loss account and the balance sheet in such form as may be prescribed by the State Government in consulta-
25 tion with the Comptroller and Auditor-General of India.

30 (2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India or by such person as he may authorise in this behalf and any expenditure incurred by him in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

35 (3) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of the Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Board.

40 (4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person authorised by him in this behalf together with the audit report thereon shall

be forwarded annually to the State Government and that Government may issue such instructions to the Board in respect thereof as it deems fit and the Board shall comply with such instructions.

(5) The State Government shall—

5

(a) cause the accounts of the Board together with the audit report thereon forwarded to it under sub-section (4) to be laid annually before the State Legislature; and

(b) cause the accounts of the Board to be published in the prescribed manner and make available copies thereof on sale at a reasonable price.”.

Amendment
of section 75.

19. In section 75 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Without prejudice to the provisions of sub-section (1), the Board shall, as soon as may be after the end of each financial year, prepare and submit to the State Government in such form as may be prescribed a report giving an account of its activities during the previous financial year and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Board in the next financial year; and the State Government shall cause every such report to be laid before the State Legislature as soon as may be after it is received by the State Government.”.

15

20

Amendment
of section 76

20. In section 76 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

25

“(3A) Where any question or matter is referred to the Authority for arbitration under this section,—

(a) the Authority shall be deemed to enter on the reference for the purposes of paragraph 3 of the First Schedule to the Arbitration Act, 1940, on the date on which the parties appear before the Authority for the first time;

30 10 of 1940.

Provided that where the parties or any of them fail to appear before the Authority on the date fixed for the first hearing of the case and the Authority decides either on that date or any subsequent date to proceed with the case in the absence of the parties or any of them, as the case may be, the Authority shall be deemed to enter on the reference on the date of such decision;

35

(b) the Authority may, having regard to the circumstances of each case, charge such arbitration fee as it may deem reasonable.

40

5 (3B) All fees and charges due to the Authority in respect of any arbitration and award and all costs and charges for filing the award incurred by the Authority may, if they are not paid by the person from whom they are due within a period of one month from the date of a notice given to him by the Authority in this behalf, be recovered from him in the same manner as an arrear of land revenue."

21. For section 77 of the principal Act, the following sections shall be substituted, namely:—

Substitution
of new sec-
tions for
section 77.
Penalties.

10 "77. If any licensee or other person, not being the Board, fails without reasonable excuse to comply with, or give effect to, any direction, order or requirement made under any of the following provisions, namely:—

- 15 (a) section 4; or
(b) section 55; or
(c) clause (d) of sub-section (1) of section 57A; or
(d) section 57B; or
(e) section 58; or
(f) sub-section (3) of section 75;

20 he shall be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence with a further fine which may extend to fifty rupees for each day after the first during which the offence continues.

25 77A. All fines payable by a licensee under this Act or under any other law for the time being in force in respect of any offence committed by the licensee, shall be payable by him from that part of the clear profit to which he is entitled under the Sixth Schedule.

Source from
which fines
may be paid.

30 77B. (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by
companies.

35 Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 5

Explanation.—For the purposes of this section,—

(a) ‘company’ means any body corporate and includes a firm or other association of individuals; and 10

(b) ‘director’ in relation to a firm means a partner in the firm.

Cognizance
of offences.

77C. No court shall take cognizance of an offence under section 77, except on the complaint of,—

(a) in the case of an offence relating to section 4, by an officer of the Authority authorised in that behalf by the Authority; 15

(b) in the case of any other offence,—

(i) where a Board is constituted, by an officer of the Board authorised by the Board in that behalf; 20

(ii) where no Board is constituted, by an officer of the State Government authorised by the State Government in that behalf.”.

Amendment
of section 78.

22. In section 78 of the principal Act, in sub-section (2),—

(i) in clause (a), for the words ‘the term of office’, the words ‘the powers of the Chairman and the term of office’ shall be inserted; 25

(ii) in clause (b), for the words ‘State Electricity Councils’, the words ‘State Electricity Consultative Councils’ shall be substituted. 30

Insertion of
new section
78A.

23. After section 78 of the principal Act, the following section shall be inserted, namely:—

Directions
by the State
Govern-
ment.

“78A. (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. 35

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final.”.

Amendment
of first Sched-
ule.

24. In sub-paragraph (2) of paragraph I of the First Schedule to the principal Act, for the words beginning with ‘shall accept’ and 40

ending with 'on terms similar to the terms offered by the Board,' the following shall be substituted, namely:—

5 "may accept the loan from the Board on the terms and conditions offered or may raise a loan from other sources or employ his own funds for the purpose of such extension."

25. In sub-clause (i) of clause (b) of paragraph V of the Third Schedule to the principal Act, after the words 'the station', the words 'or the entire undertaking' shall be inserted. Amendment of Third Schedule

26. In the Fifth Schedule to the principal Act,—

10 (a) in paragraph I,—

(i) in clause (b), for the words and brackets '(including super-tax payable by the licensee as a company, but excluding other taxes on profits)', the words and brackets '(including all taxes payable on income and profits)' shall be substituted;

15 (ii) in clause (e), for the words and brackets beginning with 'interest on money' and ending with 'attributable to lines', the following words and brackets shall be substituted, namely:—

20 "interest on the depreciated cost of the lines shown in the books of the undertaking and properly attributable to the lines (whether defrayed out of capital or revenue) and interest on such working capital as is properly attributable to the lines.";

25 (b) in paragraph III, in sub-clause (b), for the words and figure '5 per centum per annum', the following words shall be substituted, namely:—

"the Reserve Bank Rate ruling at the beginning of the year referred to in paragraph I plus two per centum."

30 27. In the Sixth Schedule to the principal Act,—

(a) for the words, brackets and figures '(See section 57)', the words, brackets, figures and letter '(See sections 57 and 57A)' shall be substituted;

[(b) in paragraph I,—

35 (i) for the words 'the licensee shall so adjust his rates for the sale of electricity by periodical revision that his clear profit in any year shall not as far as possible exceed the amount of reasonable return', the following shall be substituted, namely:—

40 "Notwithstanding anything contained in the Indian Electricity Act, 1910, and the provisions in the licence of a licensee, the licensee shall so adjust his rates for the

Amendment of Sixth Schedule.

sale of electricity whether by enhancing or reducing them***that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return.”;

(ii) for the proviso, the following provisos shall be 5 substituted, namely:—

Provided that such rates shall not be enhanced more than once in any year of account:

Provided further that the licensee shall not be deemed to have failed so to adjust his rates if the clear profit 10 in any year of account has not exceeded the amount of reasonable return by fifteen *per centum* of the amount of reasonable return:

Provided further that the licensee shall not* **enhance the rates for the supply of electricity until 15 after the expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the rates, given by him to the State Government and to the Board:****

Provided further that if the rates of supply fixed in 20 pursuance of the recommendations of a rating committee constituted under section 57A are lower than those notified by the licensee under and in accordance with the preceding proviso, the licensee shall refund to the consumers the excess amount recovered by him from 25 them.”;

(c) in sub-paragraph (1) of paragraph II, for the words and figures ‘7½ per cent.’, the words ‘five per cent.’ shall be substituted;

(d) paragraph V shall be re-numbered as sub-paragraph 30 (1) thereof and after sub-paragraph (1) as so re-numbered, the following sub-paragraph shall be inserted, namely:—

“(2) On the purchase of the undertaking, the balance remaining in the Contingencies Reserve shall be handed over to the purchaser and**maintained**as such Contingen- 35 cies Reserve.”;

(e) after paragraph V, the following paragraph shall be inserted, namely:—

“VA. (1) There shall be created a reserve to be called the Development Reserve to which shall be appropriated in 40 respect of each accounting year a sum equal to the amount of income-tax and super-tax calculated at rates applicable during the assessment year for which the accounting year

11 of 1922.

of the licensee is the previous year, on the amount of development rebate to which the licensee is entitled for the accounting year under clause (vib) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922:

5 Provided that if in any accounting year, the clear profit together with the accumulations, if any, in the Tariffs and Dividends Control reserve less the sum calculated as aforesaid falls short of the reasonable return, the sum to be appropriated to the Development Reserve in respect of such
10 accounting year shall be reduced by the amount of the short-fall.

(2) Any sum to be appropriated towards the Development Reserve in respect of any accounting year under sub-paragraph (1), may be appropriated in annual instalments
15 spread over a period not exceeding five years from the commencement of that accounting year.

(3) The Development Reserve shall be available only for investment in the business of electricity supply of the undertaking.

20 (4) On the purchase of the undertaking, the Development Reserve shall be handed over to the purchaser and maintained as such Development Reserve.

VB. (1) There shall be created a reserve to be called the Deferred Taxation Reserve to which shall be appropriated in respect of each accounting year a sum equal to
25 the amount of income-tax and super-tax calculated at rates applicable during the assessment year for which the accounting year of the licensee is the previous year, on the amount of the excess, if any, of the clear profit of the
30 licensee over his income, profits and gains (hereinafter referred to as income-tax profits) computed for income-tax purposes in respect of such assessment year:

Provided that—

35 (a) where in any accounting year, any amount is appropriated towards the Development Reserve under sub-paragraph VA, the sum to be appropriated towards the Deferred Taxation Reserve under this sub-paragraph in respect of such accounting year shall be reduced to the extent of that amount;

40 (b) where for any reason the rates of supply fixed in respect of any accounting year or any part thereof are higher than—

(i) in the case of an undertaking in existence at the commencement of the Electricity (Supply)

Amendment Act, 1956, the rates prevailing at such commencement;

(ii) in the case of an undertaking coming into existence after the commencement of the Electricity (Supply) Amendment Act, 1956, the rates prevailing at the time when the undertaking commences supply; 5

the licensee shall not appropriate any amount towards the Deferred Taxation Reserve in respect of that year under this sub-paragraph. 10

(2) The amount of the Deferred Taxation Reserve shall be invested in securities authorised under the Indian Trusts Act, 1882, and on the purchase of the undertaking, any balance remaining in the reserve shall be handed over to the purchaser and maintained as such 15
Deferred Taxation Reserve. 2 of 1882.

(3) If the income-tax profits of the licensee in respect of any assessment year exceed his clear profit during the corresponding accounting year, the licensee shall be entitled to appropriate from the Deferred Taxation Reserve towards his clear profit a sum equivalent to the amount of income-tax and super-tax calculated at rates applicable during such assessment year on the amount of such excess.”;

(f) in paragraph VI,—

(i) in sub-paragraph (2), after the words ‘electricity supply of the undertaking or,’ the words ‘where it is not practicable to so invest them’ shall be inserted; 25

(ii) after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:—

“(3) Any sums invested in investments approved by the State Government under sub-paragraph (2) shall, as soon as practicable, be utilised in the business of electricity supply of the undertaking and if such sums are not so utilised they shall not form part of the capital base under clause (d) of sub-paragraph (1) of paragraph 35
XVII.”;

(g) in paragraph VII, for sub-paragraphs (2) and (3), the following sub-paragraphs shall be substituted, namely:—

“(2) The written down cost of such fixed asset shall be charged against the Contingencies Reserve during the year 40
in which the asset ceases to be available for use;

Provided that where the accumulations in the Contingencies Reserve are not sufficient to permit the charging of the entire written down cost of the asset, the excess amount may, be included in the capital base for the purpose of clause (a) of sub-paragraph (1) of paragraph XVII.

(3) The amount for which any such fixed asset is sold or the amount of its scrap value when actually realised shall be credited to the Contingencies Reserve.”;

(h) in paragraph IX, after the words ‘the excess’, the words ‘after deducting all taxes payable thereon’ shall be inserted;

(i) for paragraph X, the following paragraph shall be substituted, namely:—

“X. Except with the previous consent of the State Government, no sums shall be carried forward to a reserve and no dividends in excess of 3 per cent. shall be paid on share capital and no other distribution of profits shall be made to the shareholders in respect of any year of account so long as any of the following sums remain to be written off in the books of the undertaking, namely:—

(i) normal depreciation due for that year of account calculated in accordance with the provisions of paragraph VI;

(ii) equated instalment in respect of arrears of depreciation, computed in accordance with the provisions of paragraph XI, for that year of account;

(iii) arrears, if any, in respect of normal depreciation referred to in clause (i), accumulated after the date of application of the provisions of the Sixth Schedule to the licensee;

(iv) arrears, if any, in respect of equated instalments referred to in clause (ii).”;

(j) in paragraph XIII,—

(a) in sub-paragraph (1), for the words, figures, brackets and letter ‘as defined in section 87C(3) of the Indian Companies Act, 1913 (VII of 1913),’ the following shall be substituted, namely:—

‘as determined in accordance with the provisions of section 349 of the Companies Act, 1956.’;

(b) the following *Explanation* shall be added at the end, namely:—

“*Explanation*.—For the purposes of this paragraph, the expression ‘managing agent’ shall include every person, by whatever name called, who is in charge of the management of the whole, or substantially the whole, of the undertaking and where more persons than one are placed in charge of the management of the whole, or substantially the whole, of the undertaking, the total remuneration payable to all such persons shall not in the aggregate exceed the limits specified in this paragraph.”;

(k) to paragraph XVI, the following proviso shall be added, namely:—

“Provided that where a rating committee has been constituted under section 57A, no such dispute or difference shall be referred to the arbitration of the Authority during the period between the date of the constitution of such committee and the date of the order of the State Government made on the recommendations of the committee.”;

(l) in paragraph XVII,—

(a) in sub-paragraph (1),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) the original cost of fixed assets available for use and necessary for the purpose of the undertaking subject to the provisions of paragraph XII in respect of service lines, and the excess amount referred to in the proviso to sub-paragraph (2) of paragraph VII in respect of any fixed asset which has ceased to be available for use;”;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) the amount of investments compulsorily made under paragraph IV of this Schedule together with the amount of such investments made after the commencement of this Act from contributions towards depreciation as in the opinion of the Authority could not be utilised for the purpose of the business of electricity supply of the undertaking.”;

(iii) in clause (e) (i) (which provides for deduction of certain amounts), the word 'and' at the end shall be omitted;

5 (iv) in clause (e) (ii) (which provides for deduction of certain amounts), the words, figures and brackets 'under the provisions of sub-paragraph (2) of paragraph I of the First Schedule' shall be omitted;

(v) after the said clause (e) (ii), the following sub-clauses shall be inserted, namely:—

10 "(iii) the amount of security deposits of consumers held in cash;

(iv) the amount standing to the credit of the Tariffs and Dividends Control Reserve;

15 (v) the amount set apart for the Development Reserve;

(vi) the amount carried forward in the accounts of the licensee for distribution to the consumers under paragraph II.";

(b) in clause (b) of sub-paragraph (2),—

20 (i) for the words 'expenditure incurred on', the words 'expenditure properly incurred on' shall be substituted;

(ii) in sub-clause (iv), the words, brackets and figures 'under sub-paragraph (2) of paragraph I of the First Schedule' shall be omitted;

25 (iii) in sub-clause (x), for the word 'hereinafter', the word 'hereinbefore' shall be substituted;

(iv) in sub-clause (xi), after the words, 'other expenses', the words and brackets '(excluding interest on debentures and loans)' shall be inserted;

30 (v) after sub-clause (xii), the following sub-clause shall be inserted, namely:—

"(xiii) bonus paid to the employees of the undertaking—

35 (a) where any dispute regarding such bonus has been referred to any tribunal or other authority under any law for the time

being in force relating to industrial or labour disputes, in accordance with the decision of such tribunal or authority;

(b) in any other case, with the approval of the State Government.”;

(c) in clause (c) of sub-paragraph (2),—

(i) in sub-clause (i), for the words ‘actually appropriated for the purpose in the books of the undertaking’, the words ‘permitted by the State Government’ shall be substituted;

(ii) in sub-clause (iv), for the word ‘hereinafter’, the word ‘hereinbefore’ shall be substituted;

(iii) after sub-clause (v), the following sub-clauses shall be inserted, namely:—

“(va) contributions to the Development Reserve referred to in paragraph VA;

(vb) contributions to the Deferred Taxation Reserve referred to in paragraph VB.”;

(d) in sub-paragraph (6), for clause (b), the following clause shall be substituted, namely:—

“(b) interest charges on capital expenditure incurred, during the period between the date of the grant of the licence and the date when the undertaking commences supply, from borrowed money and properly attributable to the asset, accrued upto the date of such commencement of supply at a rate not exceeding the average Reserve Bank rate ruling at that time plus one *per centum*.”;

(e) in sub-paragraph (9),—

(i) for clause (b), the following clause shall be substituted, namely:—

“(b) the income derived from investments other than the following:—

(i) investments included in the capital base under the provisions of clause (d) of sub-paragraph (1);

(ii) investments of sums out of the Deferred Taxation Reserve.”;

(ii) in clause (c), the words, figures and brackets 'under sub-paragraph (2) of paragraph I of the First Schedule' shall be omitted;

5 (iii) after clause (c), the following clause shall be inserted, namely:—

'(d) an amount equal to one-half of one per centum on the accumulations in the Development Reserve created under paragraph VA of this Schedule.;

10 (f) for sub-paragraph (10), the following sub-paragraph shall be substituted, namely:—

"(10) 'standard rate' in respect of any year of account means the Reserve Bank rate ruling at the beginning of that year, *plus* two per centum.";

28. In the Seventh Schedule to the principal Act,—

Amendment
of Seventh
Schedule.

15 (a) for the words, figures and brackets '(See section 68 and the Fifth and Eighth Schedules)', the following shall be substituted, namely:—

"(See sections 57, 57A and 68 and the Fourth and the Sixth Schedules).";

20 (b) the heading, namely, 'Depreciation of Assets' and paragraphs I and II shall be omitted;

(c) the heading of the Table, namely, the words, figures and brackets '(See also section 57 and the Fourth and Sixth Schedules)' shall be omitted;

25 (d) in the Table, in item C,—

(i) after sub-item (d) (iv), the following sub-item shall be inserted, namely:—

"(iva) Roads other than kutcha roads—one hundred.";

30 (ii) after sub-item (f), the following sub-item shall be inserted, namely:—

"(ff) Lightning arrestors—

(i) station type—Twenty

(ii) pole type—Fifteen

(iii) synchronous condensers—Thirty-five.";

(iii) for sub-item (i), the following sub-item shall be substituted, namely:—

“(i) Overhead lines, including supports—

(i) lines on fabricated steel supports operating at nominal voltages higher than 66 kilovolts— Thirty-five. 5

(ii) lines on steel supports operating at nominal voltages, higher than 13.2 kilovolts but not exceeding 66 kilovolts— Thirty.

(iii) lines on steel or reinforced concrete supports— Twenty-five. 10

(iv) lines on treated wood supports—Twenty.”;

(iv) in sub-item (n), after clause (ii), the following clauses shall be inserted, namely;—

“(iii) Internal wiring, including fittings and apparatus— Fifteen. 15

(iv) street-light fittings— Fifteen.”;

(v) after sub-item (o), the following sub-item shall be inserted, namely:—

“(p) Communication equipment—

(i) Radio and high frequency carrier system— 20
Fifteen.

(ii) Telephone lines and telephones—Twenty.”.

Amendment
of Eighth
Schedule.

29. In the Eighth Schedule to the principal Act,—

(i) in paragraph I,—

(a) in clause (b), for the words and brackets ‘(including super-tax payable by the licensee as a company but excluding other taxes on profits)’, the words and brackets ‘(including all taxes payable on income and profits)’ shall be substituted; 25

(b) in clause (e), for the words and brackets beginning with ‘interest on money’ and ending with ‘the production of electricity therein’, the following words and brackets shall be substituted, namely:— 30

“interest on the depreciated cost of the station shown in the books of the undertaking and properly 35

attributable to the station (whether defrayed out of capital or revenue) and interest on working capital properly attributable to the station and the production of electricity therein.”;

- 5 (ii) in paragraph II, in clause (ii) of sub-paragraph (b) for the words and figure ‘5 *per centum* per annum’, the words ‘the Reserve Bank rate ruling at the beginning of that year plus two *per centum*’ shall be substituted.

M. N. KAUL,
Secretary.

